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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,154	12/02/2003	Kenneth A. Vlazny	3127-6066US	5283
24247	7590	04/09/2010	EXAMINER	
TRASKBRITT, P.C.			RADA, ALEX P	
P.O. BOX 2550			ART UNIT	
SALT LAKE CITY, UT 84110			PAPER NUMBER	
			3714	
			NOTIFICATION DATE	
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			04/09/2010	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/727,154		VLAZNY ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	ALEX P. RADA		3714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26, 28-33 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 28-33 and 36-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

### *Response to Amendment*

In response to the RCE filed 12 January 2010 wherein applicant cancels claims 27, 34, amends claims 26, 29, 30, 33, 36 and claims 26, 28-33 and 35-39 are pending in this application.

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 26-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 26-32 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). *See Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (quoting *Benson*, 409 U.S. at 70); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978) (citing *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). *See also In re Comiskey*, 499 F.3d 1365, 1376 (Fed. Cir. 2007) (request for rehearing *en banc* pending). The claims recite the method of conducting a pari-mutuel gaming activity, but the claims do not provide any machine or apparatus to perform the method. The method requires a particular machine or apparatus such that the method cannot be performed mentally or manually in a manner that reasonably accomplishes the intended purpose of the recited invention, as claimed, without the use of a structure.

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***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 26-39 are rejected under 35 U.S.C. 102(e) as being anticipated by LaNeve (US Pub. No. 2003/0125822).

Regarding claim 26 LaNeve discloses a method of conducting a pari-mutuel gaming activity comprising: providing at least one patron an opportunity to select at least one runner from a list of runners (figures 3-5; wherein selecting at least one runner from a list of runners is shown); responsive to the at least one patron selecting the at least one runner, providing the at least one patron an opportunity to place at least one first wager on a race wherein the at least one runner makes up a portion of the at least one first wager (figures 3-5; wherein when the patron selects a runner, for example runner 1, the probable payouts for that particular runner 1 is shown for a particular wager); responsive to the at least one patron placing the at least one first wager, providing the at least one patron with at least one wager option including the at least one runner and an opportunity to place at least one second wager on the race by selecting the at least one wager option (figures 3-5; wherein the patron is capable of placing another wager selecting one of the wager types such win-place-show, quiniela, exacta, trifecta, daily double, pick three or various combinations; wherein a player has the option to choose the same runner and combine it with another runner for a wager type or choose a number of different runners for another wager type); and displaying at least

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one indicia of a wager selected by the at least one patron (figures 3-5 and paragraphs [0027-0039]; wherein the graphical user interface displays to the patrons wager or wagers being placed).

Regarding claims 28 and 35, LaNeve discloses wherein the at least one second wager is not related to the at least one first wager (figures 3-5 and paragraphs [0027-0039]; wherein patron is capable of selecting different horse(s) for the second wager shown).

Regarding claims 29 and 36, LaNeve discloses wherein responsive to the at least one patron placing the at least one first wager, providing the at least one patron an opportunity to select at least another runner; wherein the at least one wager option includes the at least one runner and the at least another runner (figures 3-5 and paragraphs [0027-0039]; wherein patron may select different runners for different types of wager combinations shown).

Regarding claims 30 and 37, LaNeve discloses wherein the presenting the at least one patron with the opportunity to place the at least one second wager comprises: generating a pool of wager options including the at least one runner and the at least another runner; and displaying the pool of wager options to the least one patron (figures 4-5 and paragraphs [0027-0039] & [0044-0046]; wherein the patron may select what type of pool wager and determine the at least one runner for a particular pool wager shown).

Regarding claims 31 and 38, LaNeve discloses wherein marking an area of the displayed pool of wager options representing the at least one runner (figures 3-5; wherein a graphical user interface is shown).

Regarding claims 32 and 39, LaNeve discloses wherein displaying tote data in conjunction with at least one of the at least one first wager and the at least one second wager (figures 3-5; wherein the tote data is shown).

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Regarding claim 33, LaNeve discloses a display element for displaying information associated with a pari-mutuel gaming activity (figures 3-5; wherein the displayed information associated with a pari-mutuel gaming activity is shown); an input device for interacting with at least one patron (figure 2; wherein an input device 108 is shown); a computer operatively configured with software (figure 2 and paragraphs [0020-0026]); and wherein the software is operatively configured to enable the computer to conduct the pari-mutuel gaming activity (figures 1-5 are summary), wherein, in the pari-mutuel gaming activity: at least one patron is provided with an opportunity to select at least one runner from a list of runners displayed on the display element (figures 3-5; wherein selecting at least one runner from a list of runners displayed is shown); the at least one patron is presented with an opportunity to place at least one first wager on a race displayed on the display element in response to the at least one patron selecting the at least one runner and wherein the at least one runner makes up a portion of the least one first wager (figures 3-5; wherein when the patron selects a runner, the probable payouts for that particular runner is shown for a particular wager shown); and the at least one patron is presented with an opportunity to place at least one second wager on the race displayed on the display element in response to the at least one patron placing the at least one first wager with the input device (figures 3-5 and paragraphs [0040-0046]; wherein the patron is capable of placing another wager shown).

***Response to Arguments***

4. Applicant's arguments filed 12 January 2010 have been fully considered but they are not persuasive.

Applicant contends that the claims as amended, the prior art does not disclose, "responsive to the at least one patron placing the at least one first wager, providing the at least one patron with at least one wager option including the at least one runner and an opportunity to place at least one second wager on the race by selecting the at least one wager option".

The examiner respectfully disagrees. LaNeve disclose in a list of runners for a patron the opportunity to select at least one runner from a list of runners. LaNeve discloses a graphical user interface which provides the patron with several different probable payouts for one or several different wagers. As note above, the patron is capable of placing another wager selecting one of the wager types such win-place-show, quiniela, exacta, trifecta, daily double, pick three or various combinations. A player has the option to choose the same runner and combine it with another runner for a wager type, as shown in figures 4 and 4A, or choose a number of different runners for a different wager type like daily double or pick 3 to name a few as shown in figures 5 and 6. The limitations are interpreted to have separate wagers or placing a different wager type using the same runner for a different wager type. The process of wagering does not change, weather a patron submits payment first and then picks the runners or picks the runner and then submits payout does not change the outcome of a patron wagering on what runner(s) to choose from in any given races. Giving the claim it broadest reasonable interpretation, LaNeve discloses, "responsive to the at least one patron placing the at least one first wager, providing the at least one patron with at least one wager option including the at least one runner and an opportunity to place at least one second wager on the race by selecting the at least one wager option".

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX P. RADA whose telephone number is (571)272-4452. The examiner can normally be reached on Monday - Thursday, 09:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. R./  
Examiner, Art Unit 3714

/Peter D. Vo/  
Supervisory Patent Examiner, Art Unit 3714